

REMARKS

The non-final Office Action mailed December 8, 2009 has been reviewed and these remarks are responsive thereto. The current Office Action rejects claims 90-102, 105-115, 117 and 118. Claim 115 has been cancelled. Claims 90, 105, 117, and 118 have been amended. No new matter has been added.

I. Claim Objections

The current Office Action objects to claims 90, 105, 115, 117, and 118 because of informalities. Applicants have amended claims 90, 105, 117, and 118 to more clearly define the invention. Claim 115 has been cancelled. The Applicants disagree with the objection to “the symptoms” and have not corrected this. As worded “the symptoms” is clear as only one “symptom” is previously referenced. There would be no antecedent basis for “the perceived symptoms”. Further it is not confusing because symptom data is different than the “symptoms”.

II. Claim Rejections – 35 U.S.C. § 103(a)

A. Claims 90, 92-94, 96-97, 100-102, 105-111, 113-115, and 117

The current Office Action rejects claims 90, 92-94, 96-97, 100-102, 105-111, 113-115, and 117 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,997,476 to Brown (hereinafter “Brown”) in view of U.S. Patent No. 6,080,106 to Lloyd (hereinafter “Lloyd”). Applicants respectfully traverse the rejection of claims 90, 92-94, 96-97, 100-102, 105-111, 113-115, and 117 for at least the following reasons.

Claim 1 requires “wherein the processing computer uses a total of the predetermined numerical score values of two or more of the answers to determine whether the symptoms indicate a deterioration of the patient’s previously diagnosed condition.” The Examiner admits in the Office Action that none of the prior art of record teach or suggest this limitation. Instead, the Examiner states “[w]hen there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her grasp. If this leads to the anticipated success, it is likely the product is not of innovation but ordinary skill and common sense... As such it is the

Examiner’s position that it would have been obvious to try to add points together instead of just compiling numbered answers for display to a healthcare professional.” The Applicants respectfully disagrees.

The recited portion of the KSR case by the Examiner states “a person of ordinary skill has good reason to pursue the **known** options” (emphasis added). The Examiner has failed to point to any “known” option, but instead just simply states it would be obvious. The cited Federal Circuit case does not state, that an unknown process can be read in by an Examiner. There is simply no teaching in any of the prior art to assign scores and add the scores up to determine whether the symptoms indicate a deterioration of the patent’s previously diagnosed condition. KSR does not stand for the proposition that an element completely missing from the prior art can simply be assumed by the Examiner.

Furthermore, claim 1 teaches “an input device operatively coupled to the processor arranged to receive answers from the patient in response to the questions, each of the answers having a pre-assigned numerical score value”. The Examiner cites to Lloyd, col. 4, lines 42-43 as teaching this limitation. Again, the Applicants respectfully disagree. Lloyd does not teach or suggest each of the answers having a pre-assigned numerical score value.” The cited portion by the Examiner simply states that an answer to the one of the questions is given on a scale of 1-5. This is NOT a pre-assigned numerical score value as taught by the specification. In particular, nothing in Lloyd would allow the addition of answers to get to a total score for determination of deterioration as taught by claim 1.

In sum, nothing in the prior art teaches scoring answers or totaling a score to determine a deterioration of a condition. These features are a marked departure from the prior art as taught in the present application. The Examiner cannot simply point to a number in one reference (without any sort of scoring or totaling) and a Federal Circuit case to make up for the deficiencies of the prior art. As such, claim 90 is allowable over the prior art of record.

Independent claims 105, 117, and 118 contain similar limitations to that of claim 90 and would therefore be allowable over the prior art of record for at least the same reasons. Claims 92-94, 96-97, and 100-102 depend from allowable claim 90 and claims

106-111 and 113-115 depend from allowable claim 105; therefore, these claims are allowable for at least the same reasons discussed above.

B. Claims 91 and 118

The current Office Action rejects claims 91 and 118 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,997,476 to Brown in view of U.S. Patent No. 6,080,106 to Lloyd (hereinafter “Lloyd”) and in further view of U.S. Patent No. 6,038,465 to Melton, Jr. (hereinafter “Melton”). Applicants respectfully traverse the rejection of claims 91 and 118. Claim 91 is dependent on claim 90 and is therefore allowable for at least the same reasons as discussed above with respect to claim 90. Claim 118 contains similar limitations to that of claim 90 discussed above and would therefore be allowable over the prior art of record for at the same reasons. Melton fails to make-up for the deficiencies discussed above.

C. Claims 98-99 and 112

The current Office Action rejects claims 98-99 and 112 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,997,476 to Brown in view of U.S. Patent No. 6,080,106 to Lloyd (hereinafter “Lloyd”) and in further view of U.S. Patent No. 6,354,996 to Drinan (hereinafter “Drinan”). Applicants respectfully traverse the rejection of claims 98-99 and 112. Claims 98-99 are dependent on allowable claim 90 and claim 112 is dependent on allowable claim 105; therefore, these claims are allowable for at least the same reasons discussed above. Drinan fails to make-up for the deficiencies discussed above.

CONCLUSION

Favorable reconsideration is requested. The Examiner is encouraged to contact the undersigned with any questions regarding this application.

Please consider this a Petition for Extension for a sufficient number of months to enter this paper or any other paper. Please charge any additional fees or credit overpayment to Deposit Account No. 50-1212.

CUSTOMER NUMBER **38824**

Respectfully submitted,

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